STATE OF MICHIGAN

COURT OF APPEALS

CITY OF HOLLAND and HOLLAND BOARD OF PUBLIC WORKS, Plaintiffs-Appellees, v DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT and DIRECTOR OF DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENT, Defendants, and NATURAL RESOURCES DEFENSE COUNCIL, INC., and SIERRA CLUB, Appellants.	UNPUBLISHED March 1, 2012 No. 302031 Ottawa Circuit Court LC No. 10-002031-AA

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Defendant Department of Natural Resources & Environment (the Department) denied the application of plaintiff Holland Board of Public Works (HBPW) for a permit to install a coal-fired generating unit. Plaintiffs then sought review of the Department's decision in the Ottawa Circuit Court. Appellants Natural Resources Defense Council, Inc., and Sierra Club (appellants) moved to intervene as defendants, but the circuit court denied their motion. Appellants now appeal by right, challenging the circuit court's denial of their motion to intervene. We affirm.

The question in this case is whether the circuit court abused its discretion by denying appellants' motion to intervene as of right or, alternatively, for permissive intervention. We review for an abuse of discretion the circuit court's decision on a motion to intervene. *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612; 773 NW2d 267 (2009). A circuit court abuses its discretion only when it reaches a decision that falls outside the range of principled outcomes. *Id.* We apply a de novo standard of review when determining whether a litigant has standing to pursue a claim. *Manuel v Gill*, 481 Mich 637, 642; 753 NW2d 48 (2008).

I

Under MCR 2.209(A)(3), a person has a right to intervene in an action upon timely application where the applicant asserts an "interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." In the present case, there is no dispute that appellants timely moved to intervene. MCR 2.209(A). Further, appellants have demonstrated an interest relating to the property or transaction that is the subject of this case, the disposition of which may, as a practical matter, impair or impede appellants' ability to protect their interest. MCR 2.209(A)(3). Appellants' members live, work, or recreate in Ottawa County, and particularly Holland, and could potentially experience adverse impacts to their personal health, recreational activities, and aesthetic interests from air pollution caused by HBPW's proposed coal plant if the Department granted the permit. See *Karrip v Cannon Twp*, 115 Mich App 726, 732; 321 NW2d 690 (1982). For these reasons, we reject plaintiffs' argument that appellants did not have a sufficient interest under MCR 2.209(A)(3) because they sought to *support* the denial of a permit rather than to *oppose* the grant of a permit. It made no difference that the Department denied rather than granted the permit. We reiterate that the test for intervention of right is simply whether the disposition of the action may impair or impede the applicant's ability to protect its interest. MCR 2.209(A)(3); see also *Solid Waste Agency of Northern Cook Co v United States Army Corps of Engineers*, 101 F3d 503 (CA 7, 1996).

Nevertheless, we conclude that the circuit court properly denied appellants' motion to intervene as of right. MCR 2.209(C) establishes the procedure for a person to intervene. "A person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107." MCR 2.209(C). The motion *must* (1) assert the grounds for intervention, and (2) "be accompanied by a pleading stating the claim or defense for which intervention is sought." MCR 2.209(C)(1) and (2). In this case, appellants did not submit a pleading to the circuit court stating their claims or defenses. Appellants, therefore, did not comply with MCR 2.209(C)(2). Because appellants did not perfect their application to intervene, the circuit court's decision to deny their motion for intervention of right fell within the range of reasonable and principled outcomes. MCR 2.209(C)(2); *American States Ins Co v Albin*, 118 Mich App 201, 209; 324 NW2d 574 (1982); *Kolar v Hudson*, 55 Mich App 114, 118-120; 222 NW2d 53 (1974). Relying in part on this Court's decision in *SNB Bank & Trust v Kensey*, 145 Mich App 765; 378 NW2d 594 (1985), appellants contend that compliance with MCR 2.209(C)(2) is merely a "technicalit[y]." But the present case and *Kensey* are distinguishable in two significant respects. First, the trial court in *Kensey* could have allowed the intervenor to participate as a party in the case for a reason independent of intervention, namely impleader. *Kensey*, 145 Mich App at 772. Second, the court rule governing garnishment in *Kensey* defined pleadings to include an affidavit—the document that the intervenor submitted in lieu of a pleading. *Id.* at 773. Both factors contributed substantially to the *Kensey* Court's finding that justice would not have been served if the trial court had not permitted intervention.

Nor did the circuit court abuse its discretion by determining that the Department adequately represented appellants' interests in this case. MCR 2.209(A)(3). We acknowledge, for example, that the Michigan Attorney General does not adequately represent an intervenor's interests when the intervenor's interests are "much narrower" than the interests of the general

public. *Karrip*, 115 Mich App at 732. In this case, however, the interests of the Department and those of appellants were the same. See *Solid Waste*, 101 F3d at 508. Both appellants and the Department sought to uphold the Department's denial of the permit. See *id.* Moreover, both appellants and the Department sought to protect Michigan's environment and public health—broad interests shared by the public at large. See *Karrip*, 115 Mich App at 732. Appellants argue that the Department does not adequately represent their interests because (1) the government is subject to changes inherent in electoral politics, and (2) the Department did not intend to argue that Executive Directive 2009-2 was constitutional and a basis for denying the permit. However, appellants provide no legal authority to establish that changes inherent in electoral politics or one party's failure to make a specific legal argument renders that party's representation of a proposed intervenor's interests inadequate. See *Ykimoff v WA Foote Mem Hosp*, 285 Mich App 80, 106; 776 NW2d 114 (2009).

In addition to the foregoing reasons, the circuit court properly denied appellants' motion to intervene as of right because appellants failed to demonstrate that they had standing to intervene in this case. Although MCR 2.209(A) does not contain a requirement regarding standing, this Court has determined that parties must demonstrate that they have standing in order to intervene as of right in litigation. *Karrip*, 115 Mich App at 732. "[U]nder Michigan law, an organization has standing to advocate for the interests of its members if the members themselves have a sufficient interest." *Lansing Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 373 n 21; 792 NW2d 686 (2010). A litigant has standing "if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large . . . ." *Id.* at 372. In this case, however, appellants' rights or interests would not be detrimentally affected in a manner different from the citizenry at large. As noted earlier, appellants' members live, work, or recreate in Ottawa County, and could potentially experience adverse impacts to their personal health, recreational activities, and aesthetic interests from air pollution caused by HBPW's proposed coal plant. But *all* citizens of Ottawa County could experience these same adverse impacts. Accordingly, "the threatened injury to [appellants] is no different than that to all generally." *Karrip*, 115 Mich App at 733.

The circuit court's decision to deny appellants' motion to intervene as of right fell within the range of reasonable and principled outcomes. *Auto-Owners*, 284 Mich App at 612. We perceive no abuse of discretion.

II

Nor can we conclude that the circuit court abused its discretion by denying appellants' motion for permissive intervention. The circuit court has "a great deal of discretion in granting or denying [permissive] intervention." *Mason v Scarpuzza*, 147 Mich App 180, 187; 383 NW2d 158 (1985). Under MCR 2.209(B)(2), the court may permit a person to intervene in an action on timely application "when an applicant's claim or defense and the main action have a question of law or fact in common." However, "[i]n exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." MCR 2.209(B). As with an applicant moving to intervene as of right under MCR 2.209(A), an applicant moving to intervene permissively under MCR 2.209(B) must comply with the procedural requirements of MCR 2.209(C). Moreover, Michigan law requires

applicants for permissive intervention to demonstrate that they have standing to assert their claims or defenses. See *Karrip*, 115 Mich App at 732-733.

As explained previously, appellants did not comply with MCR 2.209(C)(2) because they did not file pleadings with their motion to intervene. Nor did appellants satisfy the standing requirement. *Karrip*, 115 Mich App at 732-733. Furthermore, the record supports the circuit court's finding that permissive intervention would have unduly delayed or prejudiced plaintiffs' rights. Appellants moved to intervene almost four years after HBPW submitted its application to the Department. Plaintiffs alleged that new environmental regulations taking effect in 2011 would impose new requirements on HBPW and that the Department's processing of the application would be further delayed if this litigation were prolonged. We note that, if permitted to intervene, appellants would have become parties to the case and would have obtained the right to discovery. See MCR 2.302(A); see also *Blue Cross & Blue Shield of Mich v Eaton Rapids Community Hosp*, 221 Mich App 301, 307; 561 NW2d 488 (1997). Given that appellants sought intervention for the specific purposes of obtaining the rights to discovery and settlement, the circuit court could have fairly inferred that they would exercise these rights if permitted to intervene. In light of the already protracted nature of this litigation and the likelihood that appellants would seek further discovery in the event of intervention, the circuit court's conclusion that permissive intervention would cause undue delay and prejudice to plaintiffs did not fall outside the range of reasonable and principled outcomes. MCR 2.209(B); *Auto-Owners*, 284 Mich App at 612. We perceive no abuse of discretion in the circuit court's denial of appellant's motion for permissive intervention.

Affirmed. No taxable costs under MCR 7.219, a public question having been involved.

/s/ Kathleen Jansen
/s/ David H. Sawyer